

United States
Circuit Court of Appeals

For the Ninth Circuit.

MISUYE KOBAYASHI,

Appellant,

vs.

WILLIAM A. CARMICHAEL, District Director,
United States Immigration and Naturalization
Service, Department of Justice,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United
States for the Southern District of California,
Central Division

FILED

APR - 3 1941

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

THEODORE E. BOWEN, Esq.,
615 Broadway Arcade Bldg.,
542 South Broadway,
Los Angeles, Calif.

For Appellee:

WM. FLEET PALMER, Esq.,
United States Attorney,
RUSSELL K. LAMBEAU, Esq.,
Assistant United States Attorney,
R. F. DUNI, Esq.,
Assistant United States Attorney,
600 U. S. Postoffice & Courthouse Bldg.,
Los Angeles, Calif. [1*]

*Page numbering appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States for the
Southern District of California,
Central Division
No. 14569-M

In the Matter of

MISUYE KOBAYASHI,
on Habeas Corpus.

COMPLAINT AND PETITION FOR WRIT
OF HABEAS CORPUS

The complaint and petition of Tomekichi Kobayashi, the husband and next of friend of Misuye Kobayashi, respectfully shows:

I.

That your petitioner, Tomekichi Kobayashi, is a native born American citizen, having been born in the Territory of Hawaii on February 2, 1902; that Misuye Kobayashi, hereinafter referred to as the "detained", is the wife of your petitioner and was married to him in the year 1926;

That your petitioner and the detained have three children, all of whom are native born American citizens, namely,

Jack Kobayashi, born at Los Angeles, California, on September 19th, 1928; Frank Kobayashi, born at Los Angeles, California, on July 31, 1930; and Raymond Kobayashi, born at Los Angeles, California, on February 15, 1933.

II.

That the detained is now actually imprisoned and restrained of her liberty and detained by color of authority of the United States of America in the custody of William A. Carmichael, District Director, United States Immigration and Naturalization Service, Department of Justice of the United States of America, to wit, in the City of Los Angeles, State of California;

That said imprisonment, restraint and detention are unlawful and illegal, and the illegality thereof consists of the facts and matters herein alleged. [2]

III.

That the sole claim or authority by virtue of which said William A. Carmichael, District Director of the United States Immigration & Naturalization Service, as aforesaid, so restrains said detained is a certain warrant issued by the Attorney General of the United States ordering and directing the deportation of said detained to Japan, solely on the alleged charges and findings "that you violated the laws of the United States, to wit, the Act of 1924 in that at the time of your entry you were not in possession of an unexpired visa; and that you are an alien ineligible to citizenship and are not exempted by paragraph c, Section 13 thereof."

IV.

That the said charges in the said Warrant of Deportation do not state facts sufficient to constitute grounds sufficient for deportation.

V.

That there is no evidence in the record before the United States Immigration Service to support the charges contained in said Warrant of Deportation and in truth and in fact the evidence adduced conclusively establishes that at the time of the last entry of Misuye Kobayashi to the United States she had in her possession a visa entitling her to enter the United States.

VI.

That the deportation of said Misuye Kobayashi is barred by the provisions of Section 19 of the Immigration Act of 1917 in that she has resided in the United States for more than three consecutive years, to wit, since about April 1, 1927.

VII.

That said petitioner immigrated permanently from Japan and took up her residence in Mexico in the year 1927; that her residence was taken in Mexico to enable her to be near her husband; [3] that there is no authority in law to deport the detained to any place other than Mexico, the country from which she came.

VIII.

That the Secretary of Labor and the Attorney General of the United States of America, and those acting in assistance of them, including respondent herein, have acted unfairly and unjustly, and abused their discretion and deprived the detained of due

process of law in the following particulars, to wit:

That no proper record was kept of the hearing before a Board of Special Inquiry held on the 2nd day of March, 1927, at San Ysidro, California, at which time the detained was an applicant for admission to the United States and had in her possession an immigration visa entitling her to enter; that Section 17 of the Immigration Act of 1917 (8 USCA, Sec. 154) provides that Boards of Special Inquiry shall keep a complete, permanent record of their proceedings and of all such testimony as may be produced before them; that no such record was kept of the said hearing and that the detained was thereby deprived of such record and that if such record had been produced it would have conclusively established that the detained was not deportable and that her deportation was barred.

IX.

That no previous application for a Writ of Habeas Corpus has been made in this matter; that this petition cannot be heard on notice for the reason that respondent is threatening to deport the detained from the United States forthwith and before this petition can be heard on notice. That petitioner's counsel will orally notify the respondent of the time and place when he will present this petition to the Honorable Court.

X.

That your petitioner has not in his custody or possession a complete copy of the immigration rec-

ords and proceedings applicable [4] to the deportation of said detained and cannot procure copies thereof to file with this petition; that petitioner prays that respondent be ordered to file with this Court a certified copy of said proceedings and records and the whole thereof and petitioner stipulates and agrees when said records and evidence are received and presented for consideration, that said records and evidence be of the same force and effect as if filed herewith as part and parcel of this petition.

Wherefore petitioner prays that a Writ of Habeas Corpus issue out of and under the seal of this Court directing the said William A. Carmichael, District Director of the United States Immigration Service, as aforesaid, to have the body of Misuye Kobayashi before this Honorable Court at a time and place to be in said Writ specified, together with the true cause of her detention, to the end that due inquiry may be had in the premises, and petitioner prays that this Court may proceed in a summary way to determine the facts in the case and the legality of said detained's imprisonment, restraint and detention, and thereupon to dispose of detained as law and justice require.

THEODORE E. BOWEN,
Attorney for Petitioner,
542 South Broadway,
Los Angeles, California,
Vandyke 5483.

ORDER

Let the Writ of Habeas Corpus prayed for issue, returnable before the Court at 2 o'clock P. M. on the 25th day of November, 1940.

Pending hearing and the order thereon, it is ordered that said Misuye Kobayashi be released on furnishing bond in the sum of \$1,000.00.

Dated Oct. 28, '40, at 2 p. m.

PAUL J. McCORMICK,
Judge. [5]

State of California,
County of Los Angeles—ss.

Tomekichi Kobayashi, being by me first duly sworn, deposes and says: that he is the Petitioner in the above entitled action; that he has heard read the foregoing Complaint and Petition and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true. That he makes this verification on behalf of his wife who does not read English.

TOMEKICHI KOBAYASHI.

Subscribed and sworn to before me this 4th day of October, 1940.

[Notarial Seal] CHARLOTTE RASSAU,
Notary Public in and for the County of Los
Angeles, State of California.

My Commission expires Jan. 17, 1943.

[Endorsed]: Filed Oct. 28, 1940. [6]

[Title of District Court and Cause.]

WRIT OF HABEAS CORPUS

The President of the United States to:

William A. Carmichael, District Director of Immigration of the United States, for the Los Angeles District:

Greeting:

You are hereby commanded to have the body of Misuye Kobayashi by you imprisoned, by whatever name she shall be called, the petitioner for a Writ of Habeas Corpus, in the above-entitled case, before the above-entitled Court and the Honorable Paul J. McCormick, Judge of said Court, in the courtroom of said Court in the City of Los Angeles, California, on the 25 day of November, 1940, at 2:00 P. M., to do and receive what shall then and there be commanded in the premises, and have you then and there this Writ.

Witness: The Honorable Paul J. McCormick, Judge of the said United States District Court for the Southern District of California, Central Division.

Dated this 28 day of October, 1940.

(Seal)

R. S. ZIMMERMAN,

Clerk.

By GEO. E. RUPERICH,

Deputy.

Received the original writ and copy of complaint this 28 day of Oct., 1940.

ALBERT DEL GUESIN,

For Respondent.

[Endorsed]: Filed Feb. 27, 1941. [7]

[Title of District Court and Cause.]

RETURN TO WRIT OF HABEAS CORPUS

I, William A. Carmichael, District Director of U. S. Immigration and Naturalization Service, Los Angeles, California, District No. 20, Respondent herein, for my Return to Writ of Habeas Corpus herein, do hereby certify that I am unable to produce the body of Misuye Kobayashi before this Honorable Court this 25th day of November, 1940, for the reason that the said Misuye Kobayashi was released on bond in the sum of \$1,000.00 by order of this Honorable Court made and entered on October 28, 1940.

For further Return to said Writ I hereby certify that the true cause of the detention of the aforesaid Misuye Kobayashi is the authority contained in a certain warrant of deportation duly and regularly issued the 5th day of September, 1940, by W. W. Brown, Chief, Warrant Branch, U. S. Immigration and Naturalization Service, Department of Justice, after a hearing duly and regularly held before an Immigrant Inspector of the United States.

Department of Justice file No. 56010/22, duly certified, and copy of said warrant of deportation are attached hereto and made a part hereof.

Respectfully submitted,

WILLIAM A. CARMICHAEL,

District Director of U. S. Immigration and
Naturalization Service, Los Angeles,
California, District No. 20, Respond-
ent. [8]

EXHIBIT "A"

WARRANT—DEPORTATION OF ALIEN

United States of America

Department of Justice

Washington

16539/1525

No. 56010/22

To: District Director of Immigration and Naturalization, Los Angeles, Calif.

Or to any Officer or Employee of the United States Immigration and Naturalization Service.

Whereas, from proofs submitted to me, Chief, Warrant Branch, after due hearing before an authorized immigrant inspector, I have become satisfied that the alien, Mitsu or Misuye Kobayashi, who entered the United States near San Ysidro, Calif., on about the 3rd day of March, 1927, subject to deportation under the following provisions of the laws of the United States, to wit: The Act of 1924, in that at the time of her entry she was not in possession of an unexpired immigration visa; and that she is an alien ineligible to citizenship and is not exempted by paragraph (c) Section 13, thereof.

I, the undersigned officer of the United States, by virtue of the power and authority vested in me by and under the laws of the United States, do hereby command you to deport the said alien to Japan, at the expense of the appropriation, "General Expenses, Immigration and Naturalization Service, 1941," including the expenses, of an attendant, if

necessary. Delivery of the alien and acceptance for deportation will serve to cancel the outstanding appearance bond. This warrant supersedes formal warrant of deportation dated December 18, 1939, and telegraphic warrant of deportation dated January 22, 1940.

For so doing this shall be your sufficient warrant.

Witness my hand and seal this 5th day of September, 1940.

/s/ W. W. BROWN,
Chief, Warrant Branch.

AG [9]

Received copy hereof this 25 day of November, 1940.

THEODORE E. BOWEN,
Attorney for Petitioner.

[Endorsed]: Filed Nov. 25, 1940. [10]

At a stated term, to wit: The September Term, A. D. 1940 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Wednesday the 18th day of December in the year of our Lord one thousand nine hundred and forty.

Present:

The Honorable: Paul J. McCormick, District Judge.

No. 14,569-M Crim.

In the Matter of Petition of

MISUYE KOBAYASHI

For a Writ of Habeas Corpus

This matter coming before the Court for hearing on Return to Writ; Theodore E. Bowen, Esq., appearing as counsel for the petitioner; R. F. Duni, Assistant U. S. Attorney, and A. Del Guercio, Agent, Immigration Department, appearing in behalf of the respondent; and A. Wahlberg, Court Reporter, being present and reporting the testimony and the proceedings; at 10:30 o'clock A. M. both sides answering ready, it is ordered that counsel proceed.

Attorney Bowen argues in support of Petition for Writ.

At 10:45 o'clock A. M. Court recesses. At 11 o'clock A. M. Court reconvenes, and all being present as before, Attorney Bowen resumes argument; at 11:02 o'clock A. M., Agent Del Guercio argues in opposition; at 11:20 o'clock A. M. Attorney Bowen argues in closing; and at 11:40 o'clock A. M. the Court renders oral opinion and decision and orders that the petition be dismissed and the alien remanded to the custody of the U. S. Immigration Service for such action that may be deemed advisable and prudent in this matter. [11]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Misuye Kobayashi, the petitioner in the above entitled matter, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit, from the judgment of the District Court of the United States, in and for the Southern District of California, Central Division, discharging the Writ of Habeas Corpus heretofore issued and remanding the petitioner to the custody of Immigration authorities.

Dated at Los Angeles, California, this 30th day of December, 1940.

THEODORE E. BOWEN,

Attorney for Petitioner.

Copy of notice mailed to Wm. A. Carmichael, District Director of Immigration and Naturalization, 12/30/40.

R. S. ZIMMERMAN,

Clerk.

By E. L. S.

Received copy of the within Notice of Appeal this 30th day of December, 1940.

RUSSELL K. LAMBEAU,

By ANN HODGE,

Attorney for Respondent.

[Endorsed]: Filed Dec. 30, 1940. [12]

[Title of District Court and Cause.]

COST BOND ON APPEAL

\$250.00

Know All Men by these presents:

That the undersigned, Western Surety Company, a corporation, authorized to transact a general surety business in the State of California, is held and bound unto the United States of America, in the full and just sum of Two Hundred Fifty & No/100 (\$250.00) Dollars, to be paid to the said United States of America, its certain attorney, executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents;

Sealed with our seal and dated this 30th day of December, 1940.

Whereas, lately in the District Court of the United States for the Southern District of California, Central Division, in a Habeas Corpus proceeding in said Court, between Mitsu or Misuye Kobayashi, the Petitioner, and the Respondent Wm. A. Carmichael, District Director of Immigration, an Order, Judgment and Decree was rendered against the said Petitioner, discharging the Writ of Habeas Corpus and remanding the said Petitioner into the custody of the aforesaid Respondent, and the said Petitioner having filed a Notice of Appeal to the United States Circuit Court of Appeals for the Ninth Circuit;

Now therefore, the conditions of the above obligation is such that if the said Petitioner, Mitsu or Misuye Kobayashi shall prosecute her appeal to effect and answer all costs if she [13] fails to make good her plea, then the obligation to be void, otherwise to remain in full force and virtue.

(Seal)

WESTERN SURETY
COMPANY,
P. F. KIRBY,
Vice-President,

Attorney-in-Fact.

State of California,
County of Los Angeles—ss.

On this 30th day of December, A. D. 1940, before me, Marva Weede, a Notary Public in and for said County and State, personally appeared P. F. Kirby, Vice-Pres. of Western Surety Co., known to me to be the person whose name is subscribed to the within instrument, as the Attorney-in-Fact of Western Surety Company, and acknowledged to me that he subscribed the name of Western Surety Company thereto as principal and his own name as Attorney-in-Fact.

In witness whereof, I have hereunto set my hand

and affixed my official seal the day and year in this certificate first above written.

[Seal]

MARVA WEEDE,
Notary Public in and for said County
and State.

My Commission expires February 3, 1942.

Examined and recommended for approval as provided in Rule 28.

THEODORE E. BOWEN,
Attorney.

[Endorsed]: Filed Dec. 30, 1940. [14]

[Title of District Court and Cause.]

STIPULATION REGARDING ORIGINAL
RECORDS AND FILES OF DEPARTMENT
OF LABOR.

It is hereby stipulated and agreed, by and between Theodore E. Bowen, attorney for Misuye Kobayashi, appellant, and William Fleet Palmer, attorney for William A. Carmichael, District Director of the United States Immigration Service, appellee, that the original files and records of the Department of Justice covering the deportation proceedings against the petitioner which were filed in the hearing in the above entitled cause, may be by the Clerk of this Court sent up to the Clerk of the Circuit Court of Appeals for the Ninth Circuit, as part of the Appellate Record, in order that the said original immigration files may be considered by the

Circuit Court of Appeals for the Ninth Circuit in lieu of a certified copy of said records and files and that said original records may be transmitted as part of the appellate record.

Dated this 5 day of February, 1941.

THEODORE E. BOWEN,

Attorney for Appellant.

WILLIAM FLEET PALMER,

By RUSSELL K. LAMBEAU,

Attorneys for Appellee.

[Endorsed]: Filed Feb. 6, 1941. [15]

[Title of District Court and Cause.]

ORDER FOR TRANSMISSION OF
ORIGINAL EXHIBITS

On stipulation of counsel, it is by the Court ordered that the original records of the United States Immigration Office filed herein on the return of the respondent, William A. Carmichael, District Director of the United States Immigration Service, to the Writ of Habeas Corpus, be transmitted by the Clerk of this Court to the United States Circuit Court of Appeals for the Ninth Circuit, as original exhibits in lieu of certified copy of said records and files, and that the same need not be printed.

Dated this 6th day of Feb., 1941.

PAUL J. McCORMICK,

Judge.

[Endorsed]: Filed Feb. 6, 1941. [16]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, R. S. Zimmerman, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages, numbered 1 to 19, inclusive, contain full, true and correct copies of the Complaint and Petition for Writ of Habeas Corpus; Order for Writ of Habeas Corpus; Writ of Habeas Corpus; Return on Writ of Habeas Corpus; Judgment; Notice of Appeal; Cost Bond on Appeal; Stipulation and Order for Transmission of Original Exhibits on Appeal; Statement of Points on Which Appellant Intends to Rely on Appeal; Order Extending Time to File Record and Docket Cause on Appeal; and Designation of Contents of Record on Appeal; which, together with the original Record and File of the United States Immigration Service, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I do further certify that the Clerk's fee for comparing, correcting and certifying the foregoing record amounts to \$5.15, which fee has been paid to me by the Appellant.

Witness my hand and the seal of said District Court, this 28th day of February, A. D. 1941.

(Seal)

R. S. ZIMMERMAN,

Clerk,

By EDMUND L. SMITH,

Deputy Clerk.

[Endorsed]: No. 9764. United States Circuit Court of Appeals for the Ninth Circuit. Misuye Kobayashi, Appellant, vs. William A. Carmichael, District Director, United States Immigration and Naturalization Service, Department of Justice, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed March 3, 1941.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
For the Ninth Circuit

No. 9764

In the Matter of
MISUYE KOBAYASHI,
On Habeas Corpus.

STATEMENT OF THE POINTS ON WHICH
APPELLANT INTENDS TO RELY ON AP-
PEAL AND DESIGNATION OF THE
PARTS OF THE RECORD WHICH AP-
PELLANT THINKS NECESSARY FOR
THE CONSIDERATION THEREOF.

The points upon which appellant intends to rely
on appeal are as follows:

I.

The Court erred in remanding Misuye Kobayashi
to the custody of the United States Immigration
Service for deportation.

II.

The Court erred in holding and deciding that the Writ of Habeas Corpus should be dismissed and discharged.

III.

The Court erred in holding and deciding that there was substantial testimony to sustain the findings on which the Warrant for Deportation of Misuye Kobayashi was based.

The parts of the record which appellant thinks necessary for consideration are:

1. Complaint and Petition for Writ of Habeas Corpus; (Record ps. 2 to 5).
2. Writ of Habeas Corpus (Record p. 7).
3. Return to Writ of Habeas Corpus (Record p. 8).
4. Judgment dismissing and discharging Writ of Habeas Corpus and remanding Misuye Kobayashi to the United States Immigration Service for deportation, dated December 18, 1940 (Record p. 11).
5. Notice of Appeal (Record p. 12).
6. Cost Bond on appeal (Record p. 13).
7. Stipulation regarding original records and files of Department of Labor (Record p. 15).
8. Order for transmission of original records (Record p. 16).

THEODORE E. BOWEN,
Attorney for Appellant.

State of California,
County of Los Angeles—ss.

Lucette Engh, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within action; that affiant makes this service on behalf of attorney for appellant, whose address is 542 South Broadway, Los Angeles, California; That on the 28th day of February, A. D. 1941 affiant served the within Statement of the Points on which Appellant Intends to Rely on Appeal and designation of the parts of the record which appellant thinks necessary for the consideration thereof on the respondent in said action, by placing a true copy thereof in an envelope addressed to the attorney for respondent at the business address of said attorney for respondent, as follows: Ben Harrison, United States Attorney, Federal Building, Los Angeles, California, and then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, Calif. That there is delivery service by United States mail at the place so addressed..... there is a regular communication by mail between the place of mailing and the place so addressed.

LUCETTE ENGH.

Subscribed and sworn to before me this 28th day of February, 1941.

(Seal)

GEORGE COHEN,

Notary Public in and for said County and State.

[Endorsed]: Filed March 3, 1941. Paul P. O'Brien, Clerk.

